

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re K.D., a Person Coming Under the
Juvenile Court Law.

2d Juv. No. B260982
(Super. Ct. No. J070016)
(Ventura County)

VENTURA COUNTY HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

S.D.,

Defendant and Appellant.

S.D. ("Mother") appeals an order of the juvenile court denying her motion regarding placement of her minor daughter K.D. with relatives outside Ventura County. We affirm.

FACTUAL AND PROCEDURAL HISTORY

On April 15, 2014, Mother and her minor daughter N.M. physically fought inside the family home and outside in the front yard. Mother bit her minor daughter K.D. when K.D. intervened. On May 12, 2014, the Ventura County Human Services Agency ("HSA") filed a dependency petition on behalf of the two teenage minors pursuant to Welfare and Institutions Code section 300, subdivisions (a), (b), (g),

and (j).¹ HSA also alleged that Mother had received family maintenance services in 2000 and 2001 in Sacramento County, and had been involved in formal dependency proceedings in 2006, and, in 2007 through 2011, also in Sacramento County.

On June 19, 2014, Mother left her daughters alone while she vacationed outside the state. During Mother's absence, the two girls engaged in a physical altercation. On June 26, 2014, HSA filed an amended dependency petition pursuant to section 300, subdivisions (a), (b), (c), (d), and (j). On June 27, 2014, the juvenile court ordered the children detained, vested temporary care and placement of them with HSA, and ordered HSA to provide Mother with family reunification services.

On June 24, 2014, HSA placed the children in Casa Pacifica, a temporary shelter home. During K.D.'s eventual four-month stay at the shelter, she consistently stated that she wanted to live with her maternal aunt in Tennessee, as she had for an extended period in 2013 and 2014. K.D. engaged in "cutting" behavior while at Casa Pacifica and wrote notes reflecting despair and suicide. She often refused to visit with Mother and was "adamant[]" that she did not want contact with Mother upon moving to Tennessee. K.D. later wrote to the juvenile court stating that she did not want to live with Mother ("[W]hy, after so many years, why would my mom change now[?]").

Following the filing of the original dependency petition, counsel for the children requested a contested disposition hearing. Counsel also requested HSA to obtain approval of relatives' homes to ensure that "the Agency [is] in a position where they can move the children quickly to relatives." On June 25, 2014, HSA informed the juvenile court that it had initiated an Interstate Compact on the Placement of Children ("ICPC") request regarding the maternal aunt's home in Tennessee. (Fam. Code, § 7900 et seq.)

¹ All further statutory references are to the Welfare and Institutions Code unless stated otherwise.

Jurisdiction and Disposition Hearing

On July 9, 2014, the juvenile court held a contested jurisdiction and disposition hearing. The court received evidence of HSA reports and memoranda and Mother testified. Following receipt of evidence and Mother's testimony, the parties argued regarding placement of the minors with relatives outside Ventura County. HSA stated that it would initiate an ICPC study of the maternal aunt's home in Tennessee.

The juvenile court sustained the allegations of the amended dependency petitions and ordered, among other things, that HSA "has the discretion to release the children to a suitable relative based upon satisfactory home approval requirements . . . and a satisfactory home evaluation" The juvenile court judge noted that the minors "deserve some stability . . . whether that's with placement with relatives out of county in California or out of state, if necessary."

Mother's Prior Appeal

On July 14, 2014, Mother filed a notice of appeal regarding the juvenile court's disposition order, i.e., "removal of minors from home, out of [county] placement." Counsel later filed an appellate brief pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835, and we dismissed the appeal as abandoned. (*Ventura County Human Services Agency v. S.D.* (B258037, Dec. 1, 2014).)

Post-Disposition Events

In September 2014, an off-duty police officer saw Mother and her current husband physically fighting inside a vehicle. Police officers later caused a traffic stop and discovered a stolen and loaded firearm inside the vehicle. HSA later learned that Mother's husband has an extensive criminal history, including arrests and convictions for child abuse, domestic violence, and illegal drugs.

On September 29, 2014, the Tennessee home of K.D.'s maternal aunt was approved for placement pursuant to the ICPC. HSA held a telephone meeting with Mother, the maternal aunt, and social workers to discuss K.D.'s placement. Following discussion of "[a]ll possible placements," Mother agreed in writing to K.D.'s placement

in Tennessee. Shortly thereafter, however, on October 2, 2014, Mother changed her mind regarding K.D.'s placement in Tennessee.

Mother's Motion Regarding Placement

On October 14, 2014, Mother filed a motion requesting that K.D. not be placed outside Ventura County. She alleged that placement in Tennessee with K.D.'s maternal aunt was not in K.D.'s best interests and it would prevent family reunification.

On October 24, 2014, HSA placed K.D. with her maternal aunt. HSA did not comply with section 361, subdivision (h), however, regarding 14-days' notice to a parent prior to removal of a child outside the county.

On October 31, 2014, following argument by the parties, the juvenile court denied Mother's motion, ruling that the disposition hearing and orders therefrom had authorized placement by HSA "for whatever the ICPC brought about."

Mother appeals regarding placement of K.D. in Tennessee absent compliance with section 361.2, subdivision (h), and a hearing on her motion.²

DISCUSSION

Mother argues that K.D.'s placement without a prior court hearing on the merits of the placement violates section 361.2, subdivision (h), as well as constitutional principles of separation of powers. She points out that HSA moved K.D. while the placement motion was pending. Mother adds that a decision regarding placement of K.D. falls within the jurisdiction and authority of the juvenile court, not HSA.

Section 361.2, subdivision (h) provides: "Whenever the social worker must change the placement of the child and is unable to find a suitable placement within the county and must place the child outside the county, the placement shall not be made until he or she has served written notice on the parent or guardian at least 14 days prior to the placement, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given. The notice shall state the

² N.M., now nearly 18 years old, is not a subject of this appeal. For this reason, we do not discuss the allegations and orders relating to her dependency.

reasons which require placement outside the county. The parent or guardian may object to the placement not later than seven days after receipt of the notice and, upon objection, the court shall hold a hearing not later than five days after the objection and prior to the placement. The court shall order out-of-county placement if it finds that the child's particular needs require placement outside the county."

Although HSA did not provide Mother with 14 days' notice of K.D.'s removal and placement in Tennessee, Mother received notice and a hearing regarding the matter during the jurisdiction and disposition hearing. Mother, HSA, and the juvenile court recognized that placement of K.D. in Tennessee with her maternal aunt was in controversy. K.D.'s counsel had requested a contested disposition hearing and had requested HSA to obtain approval of relatives' homes so that HSA could "move the children quickly to relatives." Mother also participated in a team meeting concerning K.D.'s placement in Tennessee and was therefore aware of K.D.'s possible change of placement. Mother thus received due process of law regarding K.D.'s placement, and error in failing to give 14-days' notice of removal and holding a (second) hearing is harmless. Noncompliance with section 361.2, subdivision (h) under these circumstances would elevate form over substance.

The juvenile court properly denied Mother's motion because it had been already litigated. During the jurisdiction and disposition hearing, the parties argued concerning K.D.'s placement with the maternal aunt. The court contemplated that placement with the aunt would occur following a favorable report from ICPC. The July 9, 2014, disposition order clearly authorized HSA to place K.D. with her maternal aunt subject to a satisfactory home evaluation. The dependency system envisions a cooperative effort between the social services agency and the juvenile court. (*In re Z.C.* (2009) 178 Cal.App.4th 1271, 1287.) The court's order did not give HSA complete or unfettered discretion regarding K.D.'s placement.

Moreover, section 361.2, subdivision (h) contains an exception to notice and hearing where the child's "health or well-being is endangered by delaying the

action." HSA reported that K.D.'s mental health was fragile; she was continuing to cut herself and had expressed thoughts of suicide. K.D. also refused to participate in therapy and declined Mother's visits. Placement of K.D. in Tennessee thus fell within the exception to notice provision of section 361.2, subdivision (h).

The order is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Bruce A. Young, Judge
Superior Court County of Ventura

Donna Balderston Kaiser, under appointment by the Court of Appeal, for
Defendant and Appellant.

Leroy Smith, County Counsel, Joseph J. Randazzo, Assistant County
Counsel, for Plaintiff and Respondent.